

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES MYART, JR.	§	
	§	
CROSS ACTION PLAINTIFF	§	
VS	§	
MCCORMACK BARON	§	
MANAGEMENT, ET AL. AND	§	
BEXAR COUNTY, ET AL.	§	
CROSS ACTION DEFENDANTS	§	
	§	Civil Action No. <u>5:19-CV-862</u>
	§	
	§	
MCCORMACK BARON	§	
MANAGEMENT, INC.	§	
PLAINTIFF	§	
VS.	§	
JAMES MYART, JR.	§	
DEFENDANT	§	

NOTICE OF REMOVAL

COMES NOW, DEFENDANTS BEXAR COUNTY, TEXAS, BEXAR COUNTY JUDGE NELSON WOLFF, LAURA COLE AND DR. IVEY (“Bexar County Defendants”) to file this Notice of Removal pursuant to 28 U.S.C. § 1446(a).

INTRODUCTION

1. On August 15, 2018, Plaintiff McCormack Baron Management, Inc. filed Plaintiff’s Application for Protective Order in Case No. 2018-CI-15370, in the 186th District Court, Bexar County against Defendant James Myart, Jr. See Exhibit A, Page 87 – 92. Mr. Myart filed an Answer. See Exhibit A, Pages 85- 86.

2. On June 12, 2019, Mr. Myart filed “Plaintiff’s Sworn Cross Action- Petition Application for Temporary Restraining Order and Temporary Injunction Against all Defendants. See Exhibit A, Pages 24-36. He became a Cross Action Plaintiff. With this action, Mr. Myart added as Defendants to his Cross Action Bexar County, Texas, Bexar County Judge Nelson Wolff, Bexar County employee Laura Cole and Bexar County employee Dr. Ivey as well as McCormack Baron Management, Inc. and Ms. Nicole Love. The Bexar County Defendants were served between June 19-21, 2019. See Exhibit A, Service on Bexar County, Texas, Pages 95-96 (June 21, 2019); Bexar County Judge Nelson Wolff, Pages 93-94 (July 21, 2019); Laura Cole, Pages 99-100 (June 19, 2019) and Dr. Ivey, Pages 97-98 (June 20, 2019). Cross Defendants McCormack Baron Management, Inc. and Nicole Love have not been served.

3. On July 11, 2019, Defendants Bexar County Judge Nelson Wolff, Bexar County, Texas, Laura Cole and Dr. Ivey filed their original general denial. See Exhibit A, Pages 13-16.

4. Defendants Bexar County Judge Nelson Wolff, Bexar County, Texas, Laura Cole and Dr. Ivey file their notice of removal within the 30-day period required by 28 U.S.C. §1446(b).

BASES FOR REMOVAL

5. Removal is properly based on federal question pursuant to 28 U.S.C. §§ 1331, 1441(a) as found in Mr. Myart’s Sworn Cross Action- Petition Application for Temporary Restraining Order and Temporary Injunction Against all Defendants. See Exhibit A, Pages 24-36.

- a. Mr. Myart’s basis for his claims as found in his Cross-Action include:
 - i. First Cause of Action. United States Constitutional Amendment XIV Violation of Equal Protection of the Law (a) Violation of 42 U.S.C. §1983. See Exhibit A,

page 27. Mr. Myart complains that while he was at Wheatley Court Senior Center that the Defendants have violated his constitutional rights by racially profiling him and falsely arresting him. *Id.*

ii. Second Cause of Action. Violations of U.S. Constitution including housing and disability discrimination on the basis of race, age and disability. Plaintiff specifically alleges these violations occurred in violation of rights under “the State of Texas and U.S. Constitution.” See Exhibit A, pages 29-31.

iii. Mr. Myart claims that excessive force has been used against him, that he has suffered racial discrimination and that he has suffered an unlawful and unreasonable seizure in violation of the United States Constitution. *Id.*

b. To the extent Mr. Myart sets forth any state law claims, the District Court shall have supplemental jurisdiction over the same.

6. Pursuant to 28 U.S.C. §§ 1441 and 1446, Cross Defendants remove this action to the United States District Court for the Western District of Texas, San Antonio Division, which is the judicial district and division in which the State Court Action is pending.

7. All pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a).

8. Defendants McCormack Baron Management Inc. and Ms. Nicole Love consent to this instant removal as demonstrated by the attached Notice of Consent to Removal.

INDEX OF EXHIBITS

9. All file-stamped pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). Those filings consist of the following:

- a) Exhibit A: Certified Copy of all pleadings in State Court
- b) Exhibit B: Plaintiff McCormack Baron Management, Inc. Consent to Removal

JURY DEMAND

10. Defendant demands a jury trial.

CONCLUSION AND PRAYER

11. For these reasons, the Bexar County Defendants asks the Court to uphold this removal and to retain jurisdiction over this suit.

Respectfully submitted,

JOE D. GONZALES
Bexar County Criminal District Attorney

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Texas, Bexar County Judge Nelson Wolff,
Laura Cole and Dr. Ivey*

CERTIFICATE OF SERVICE

I do hereby certify on the 19th day of July 2019, I electronically filed Defendants' Notice of Removal with the Clerk of Court and I do hereby certify delivery to the following as demonstrated below:

Mr. James Myart, Jr.
714 Canton
San Antonio Texas 78202-3264

**By Certified Mail Return Receipt Requested*

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**By regular U.S. Mail*

/s/ Susan A. Bowen

SUSAN A. BOWEN